

AO 91 (Rev. 11/11) Criminal Complaint

United States District Court
Southern District of Texas
FILED

UNITED STATES DISTRICT COURT

OCT 07 2019

for the

Southern District of Texas

David J. Bradley, Clerk

United States of America

v.

DANIEL POLANCO

(DOB: 1981)

Case No. M-19-2419-M

Defendant(s)

SEALED

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of October 3, 3019 in the county of Harris in the
Southern District of Texas, the defendant(s) violated:

Code Section

18, U.S.C., Section 115(a)(1)(B)

Offense Description

threatened to assault HSI Special Agent Isidro Martinez, a federal law enforcement officer, with the intent to retaliate against him on account of the performance of his official duties

This criminal complaint is based on these facts:

See attached affidavit.

☒ Continued on the attached sheet.approved by AVR TSJR
for AVR & Alaniz

Complainant's signature

Antonio Perez IV HSI Special Agent

Printed name and title

Sworn to before me and signed in my presence.

Date: 10/07/2019 - 4:28 p.m.City and state: McAllen, Texas

Judge's signature

Juan F. Alaniz, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT

On May 20, 2016, federal agents arrested Daniel Polanco ("Defendant") following the return of an Indictment charging him with conspiracy to possess with intent to distribute a controlled substance, possession with intent to distribute a controlled substance and making a false statement to a government agent.

The Defendant has been on pretrial release since May 26, 2016. Conditions of the Defendant's bond, amongst others, are that the defendant violate no local, state or federal laws and have no contact with potential witnesses.

After a two-week trial before U.S. District Judge Keith P. Ellison, on July 22, 2019, a jury found the Defendant guilty of conspiracy to possess with intent to distribute a controlled substance, possession with intent to distribute a controlled substance and making a false statement to a government agent. After the jury found him guilty, Judge Ellison allowed the Defendant to remain on pre-trial release.

During the two-week trial, Homeland Security Investigations Special Agents (SA) A. Perez and I. Martinez assisted the prosecution team with among other things, witness preparation, bringing evidence into the courtroom and escorting the government's witnesses into the courtroom.

On August 1, 2019, the Defendant filed a motion for judgment of acquittal and motion for new trial. Under the statutes of conviction, the Defendant is facing a minimum term of imprisonment of 10 years and up to life for the drug offenses and a maximum term of imprisonment of 5 years for his conviction for making a false statement.

On September 18, 2019, the United States Probation Office disclosed the pre-sentence investigation report ("PSR") to the Government and Defendant's counsel. The Defendant's Guideline range is 188 months (15.6 years) to 235 months (19.5 years) imprisonment. The Court set the Defendant's sentencing hearing for December 11, 2019.

On October 3, 2019, the Defendant, his attorneys and the Government were in court for the hearing related to the Defendant's motion for judgment of acquittal and motion for new trial before U.S. District Judge Keith P. Ellison. SA A. Perez and SA I. Martinez attended the hearing. After hearing arguments of counsel, Judge Ellison denied the Defendant's motion for judgment of acquittal and motion for new trial and noted that the Defendant was facing a very harsh sentence of imprisonment.

Immediately after Judge Ellison concluded the hearing, the Defendant walked towards SA Martinez who was sitting in the last row of the courtroom closest to the exit. When the Defendant was feet away from SA I. Martinez, he stopped, pointed at SA I. Martinez and said: "This is gonna come back to you motherfuckers. You'll see." The Defendant's tone was angry and menacing. The Defendant then opened the exit door and walked out of the courtroom.

SA I. Martinez felt alarmed, concerned, and threatened by the Defendant's statement and physical gesture. Based on the defendant's statement, manner of delivery, and accompanying gesture, SA I. Martinez believed that the defendant was threatening him with bodily harm. SA I. Martinez immediately reported the threat and gesture to Assistant United States Attorneys Anibal Alaniz and Casey MacDonald, Agent Perez and Paralegal Eva Aldrete who were at the front in the courtroom.

Based on the facts and circumstances outlined in this affidavit, I believe there is probable cause to believe Daniel POLANCO threatened to assault SA I. Martinez, a federal law enforcement officer with the intent to retaliate against him on account of his performance of his official duties in violation of Title 18 United States Code Section 115(a)(1)(B).